

KAUA'I PLANNING COMMISSION
CONTESTED CASE CALENDAR
July 25, 2017

The Contested Case Calendar of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Ho at 9:00 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Vice Chair Roy Ho
Ms. Kanoe Ahuna
Mr. Sean Mahoney
Ms. Glenda Nogami Streufert

Absent and Excused:
Chair Kimo Keawe
Ms. Donna Apisa
Mr. Wade Lord

The following staff members were present: Planning Department – Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Peter Morimoto; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALENDAR

Status and Scheduling of the following matters on the Planning Commission Contested Case Calendar of 12/13/16 and 2/28/17; and deferred on 12/13/16, 2/28/17, and 5/9/17 pertaining to:

Petitioners Kirby B. Guyer and Milton Searles' Motion to Disqualify Hearing Officer, Declaration Jonathan J. Chun; Certificate of Service (related to Application for a Use Permit, Special Management Area Permit and Class IV Zoning Permit on Property Situated at Hā'ena, Kaua'i, Hawai'i identified by Kaua'i TMK No. (4)5-8-012: 22 containing a total area of 11,827 sq. ft.) [Deferred 12/13/16, 2/28/17.]

Petitioners John R. Hoff Trust and Lorna E. Hoff Trusts' Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Appeal Decision of Planning Director Relating to the Notice of Violation and Order to Pay Fines Related to Use Permit U-2015-28, Special Permit SP-2015-9 and Class IV Zoning Permit Z-IV-2015-29 on Property Situated at Lāwa'i, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 2-5-005: 080 CPR Unit 1 containing a total area of 1.032 acres) (contested case files CC-2015-18, CC-2016-7) [Deferred 12/13/16, 2/28/17.]

Petitioners Lloyd R. Fischer and Shirley E. Fischer's Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Petition to

Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #5003 for Property Situated at Kekaha, Kaua'i, Hawai'i, identified by TMK No. (4)1-3-001: 88 containing a total area of 12,453 sq. ft. (contested case files CC-2016-9, CC-2016-10) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner *Todd Schirm's* Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU # 5138 (Hale Cook) for Failure to Renew for Property Situated in Wainiha, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4)5-8-009: 8 CPR Units 1 and 2 containing a combined total area of 11,250.0 sq. ft.) (contested case file CC-2015-24) [Deferred 12/13/16, deferred 2/28/17.]

Petitioners *Bryson K. Nishimoto and Catherine J. Nishimoto's* Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #1171 (Ivy's Place) for Failure to Renew for Property Situated in Wainiha, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8-004: 26 containing 8.343 acres) (contested case file CC-2015-23) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner *Michael Chandler's* Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU # 4222 (Hale O Lani) Related to Special Permit SP-2012-1 for Failure to Renew for Property Situated at 3239 A Kalihiwai Road, Kīlauea, Kaua'i, Hawai'i, identified by TMK No. (4)5-3-003: 45 containing an area of 74,923 sq. ft.) (contested case file CC-2016-4) [Deferred 12/13/16, deferred 2/28/17.]

Petitioners *John Wark and Shannon Wark's* Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNC #4219 ('Anini Kai) related to Special Permit SP-2011-13 for Failure to Renew for Property Situated at 3525 'Anini Road, Kīlauea, Kaua'i, Hawai'i identified by TMK No. (4)5-3-004: 29 containing an area of 13,608 sq. ft.) (contested case file CC-2016-5) [Deferred 12/13/16, deferred 2/28/17.]

Petitioners *Parnell H. Kaiser and Michele L. Kaiser's* Motion to Disqualify Hearing Officer; Declaration of Jonathan J. Chun; Certificate of Service (related to Application for a Use Permit, Special Management Area Permit and Class IV Zoning Permit on Property Situated at Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4)5-5-004: 15 containing a total area of 6,046 sq. ft.) (contested case file CC-2015-15) [Deferred 12/13/16, deferred 2/28/17.]

Motion to Disqualify Hearing Officer; Certificate of Service (related to Petition to Appeal of Planning Director; and Application for a State Special Permit, etc. (Consolidated Cases) by *Michael Levy and Alexis Boilini*, Trustees of the Levy-Boilini Living Trust (contested case CC-2015-14, CC-2016-1) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner's Steven and Eddi Henry Motion to Disqualify Hearing Officer; Certificate of Service (related to Petition for Appeal of Decision of Planning Director; and, Application for a State Special Permit, etc.) (contested case file CC-2016-11) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner's William I. Cower and Catherine F. Cower Motion to Disqualify Hearing Officer; Certificate of Service (related to Petition to Appeal Decision of Planning Director; and, Application for a State Special Permit, etc. (Contested Cases) (contested case files CC-2015-17, CC-2016-2) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner Anthony S. Bardin Motion to Disqualify Hearings Officer; Declaration of Sommerset K.M. Wong; Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to TVRNCU #1225 for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TK No. (4)5-5-010: 39 containing 5,654 sq. ft.) (contested case file CC-2013-83) [Deferred 12/13/16, deferred 2/28/17.]

Petitioner's Greg Allen, Sr., and Greg Allen, Jr. Motion to Disqualify Hearings Officer; Declaration of Sommerset K.M. Wong; Certificate of Service (related to Petition to Appeal of Violation and Levy of SMA Fines Involving Property Situate in Kīlauea, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4)5-3-007: 14, and containing a total area of 16,552.0 sq. ft.) (contested case file CC-2015-4) [Deferred 12/13/16, deferred 2/28/17.]

Petitioners Thomas J. Brooks and Jennifer S. Brooks' Motion to Disqualify Hearings Officer; Declaration of Jonathan J. Chun, Certificate of Service (1/30/17) (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #4291 (Pohaku), TMK No. (4)58008021, Hā'ena, Kaua'i.) (contested case file CC-2017-1) [Referred to Hearings Officer 1/24/17.]

Petitioner Alexandra Falk Living Trust's Motion to Disqualify Hearing Officer, Declaration of Jonathan J. Chun, Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #4298 (Hale Mahana), TMK No. (4)5-8-010:15(3), Hā'ena, Kaua'i) (contested case file CC-2017-2)

Petitioner Alexandra Falk Living Trust's Motion to Disqualify Hearing Officer, Declaration of Jonathan J. Chun, Certificate of Service (related to Petition to Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #4299 (Lihi Kai), TMK No. (4)5-8-010:15(1), Hā'ena, Kaua'i) (contested case file CC-2017-3)

Vice Chair Ho: Good morning, ladies and gentlemen. Good morning. Welcome to our Planning Commission meeting. (For) Today's agenda, we will begin with (the) contested cases. We will have Mr. Peter Morimoto, as our representative today, speak for us.

Deputy County Attorney Peter Morimoto: Today we are going to proceed first with the Contested Case Calendar. It is my understanding that two (2) of the commissioners who listened to the testimony are not present today. From speaking to the Chair, his preference would be to defer this matter until the Commissioners who heard the testimony are present so that they can participate in the decision-making. If we could have representatives from the parties come up, including the Intervenors if possible. Were you able to hear what I said? The representations made. So the question is, does anyone object to deferring the matter so that the Commissioners who listened to the testimony can participate in the decision-making?

First Deputy County Attorney Matt Bracken: Matt Bracken for the Planning Department. For clarity, are we deferring the status and scheduling? Or deferring the final decision-making?

Mr. Morimoto: Deferring decision-making.

Mr. Bracken: No objection from the Planning Department.

Jonathan Chun: Jonathan Chun on behalf of my petitioners and also, as far as the status and scheduling – because the calendar indicated it was for status and scheduling – but for status and scheduling purposes, I have been in discussions with the two (2) O‘ahu attorneys and they have indicated that September 12th for a final argument would be okay for them with your schedule.

Mr. Morimoto: Final argument on the motions?

Mr. Chun: Yes.

Mr. Morimoto: I’m not certain that the Commission was going to hear any further argument. Basically, we heard quite a bit of argument previously. Was there anything that you were going to add to what was previously said?

Mr. Chun: My understanding in the minutes and the discussion at the last hearing is that the parties were going to submit proposed Findings of Fact, Conclusions of Law – which were done on the timetable – and I believe the minutes indicated that the Commission would be open to having arguments on those proposed Findings of Fact, Conclusions of Law at their decision-making and the parties agreed not to do any duplicative arguments and I think the County Attorney’s Office was going to have their individual attorneys argue their individual cases and try to also avoid duplication. That was my understanding of what the minutes reflected. But if that is going to be changed, then that’s totally within the parameters, but I need to check with the O‘ahu attorneys to see what they would insist, but that was my understanding when reviewing the minutes of the meeting; what the parties agreed to at the close of the hearing.

Mr. Morimoto: Okay. Is there going to be a time limit on the presentations?

Mr. Chun: That is up to the Commission. I think the Chair was going to...well, the Presiding Officer has the option of doing that, but the parties were very sensitive...when we were talking with Mauna Kea on that, the parties were very, very sensitive about timing and also the amount of attorneys involved and potential for duplication. I think all the attorneys were saying yeah, we

are going to try to avoid duplication as much as possible because of the time. I think we all knew that. But it is totally in the hands of the Chair.

Mr. Morimoto: Commissioners, any comment?

Vice Chair Ho: Mr. Chun, would a 5-minute time limit on your arguments be out of line?

Mr. Chun: No. I mean, it is totally within the purview of the Chair. I would not think that limiting each party to five (5) minutes...because you already have the proposed Findings of Fact, Conclusions of Law, so I would say that would be with...in line within the discretion of the Chair. I wouldn't think that would be unreasonable.

Vice Chair Ho: Okay. Thank you, Mr. Chun.

Mr. Morimoto: Mr. Chun, were you going to consolidate your arguments? You wouldn't be, like, arguing five (5) minutes per client, right?

Mr. Chun: No, and that's the point that I was saying of trying to be duplicate. I don't think Mauna Kea and I have sat down and talked about how they want to handle it. My understanding – and I could be wrong, Matt – but my understanding is I think Mauna Kea was going to do a short argument that universally applies to all the County's cases and then Mauna Kea wanted to hand it off, I believe – and I don't know what he talked... – but he was going to hand it off to the individual Deputy's on their individual case to add anything else they might have on top of that. Similar with my cases, to the extent that they were going to be...they have common on all of them, I was going to just do maybe five (5) minutes on that. Most of mine would probably not have any differences other than that, so I didn't think there was going to be anything more. One or two are different and that's why we weren't sure. Mauna Kea and I haven't really talked about which ones. What I foresee is just...I think my (inaudible) one or two are a little bit different from the main run of the mill because most of mine are just cases in which the guys filed late. Kirby Guyer one is different because she has an application pending and a Hearing Officer on that one, so there's a little bit different facts. But I can't speak for the O'ahu attorneys. Each of them, I think, have different cases, so I can't speak for what they were thinking of doing. I mean, all I can say is from my side, that's what I was going (to do). I don't know what Mauna Kea was going to do. I think the Intervenors only had the Kirby Guyer one, so they were going to speak on the Kirby Guyer matter.

Mr. Morimoto: Okay. Well, we will shoot for five (5) minutes and see what happens.

Mr. Chun: Yeah, like I said, I can't make...I mean, I can't speak for the O'ahu guys. For mine, I'm definitely going to aim for that.

Mr. Bracken: For clarity, is that five (5) minutes per attorney? The only reason I ask is we have three (3) defense attorneys and five (5) deputy county attorneys, and like Jon Chun said, we don't plan on making duplicative arguments, but some of them are slightly different so I would just request that each attorney have an opportunity to address any differences.

Vice Chair Ho: How did you do get that, Matt? You said there are five (5) O‘ahu attorneys and three (3)...

Mr. Bracken: There are three (3) defense attorneys...I mean, three (3) attorneys on one side and then there are five (5) deputy county attorneys assigned to the cases. Most of them are similar so I would say that some of our attorneys might need a minute or two just to—

Mr. Morimoto: What if we did this? Just give you twenty (20) minutes each, total; that should suffice.

Mr. Bracken: That is sufficient for us.

Mr. Morimoto: Would that work for you, Mr. Chun?

Mr. Chun: For my side, yeah. I mean, I can do that. Like I said, I can’t make any representation for the O‘ahu attorneys. I will inform them of what the Chair’s preference would be. I can’t say whether they will agree or disagree. I’m not authorized to speak for them on that.

Mr. Morimoto: Right. But if you guys could kind of work together to mesh your arguments so that we don’t hear—

Mr. Chun: Yeah, and that’s what we were going to do. That’s why, when we get a date, Mauna Kea and I were going to sit down and talk about how we were going to handle any kind of oral arguments. We really didn’t want to have duplicative arguments. I mean, that was one thing clear between all the attorneys; we didn’t want to all say the same thing because that wouldn’t be good for anybody.

Mr. Morimoto: Right. Okay. Do the Intervenors have any comments?

Caren Diamond: Caren Diamond.

Barbara Robeson: Barbara Robeson.

Ms. Diamond: Intervenors. We are fine with a deferral for today and...

Mr. Morimoto: How much time do you think you would need to make your comments or remarks?

Ms. Diamond: Five (5) minutes would be okay.

Mr. Morimoto: Five (5) minutes. Thank you. We will aim for that.

Ms. Robeson: Barbara Robeson has a question. So your original comment, though, was to defer because a couple of Planning Commissioners aren’t here today.

Mr. Morimoto: Correct.

Ms. Robeson: To defer to the next Planning Commission meeting. Was that your–

Vice Chair Ho: September 12th, I believe.

Mr. Morimoto: September 12th.

Ms. Robeson: So now not in two (2) weeks or plus. It is going to go another month.

Mr. Morimoto: Well, that–

Ms. Robeson: It's not in August. It's in September.

Mr. Morimoto: Because the applicants' attorneys will be available on that day.

Ms. Robeson: Yeah, I just want to make sure we are talking about the same thing.

Mr. Morimoto: Yes.

Ms. Robeson: Okay. Alright, thank you.

Mr. Morimoto: So decision-making will take place on September 12th.

Ms. Robeson: Okay. Alright. Thank you.

Vice Chair Ho: Are we in agreement, then? Good. (Laughter in background)

Mr. Morimoto: Can we get a motion to set it for decision-making on September 12th?

Ms. Nogami Streufert: I move that we set the decision-making for the contested cases before the Planning Commission to September 12, 2017.

Ms. Ahuna: Second.

Vice Chair Ho: A motion has been made and seconded. Any discussion of the Commissioners? Seeing none. All in favor? (Unanimous voice vote) Motion carries 4:0. Thank you.

Ms. Diamond: Thank you.

Mr. Morimoto: Thank you.

Vice Chair Ho: Thank you, Peter.

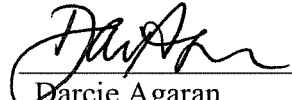
Mr. Mahoney: Thanks Peter.

ADJOURNMENT

Vice Chair Ho: With that, our first agenda is closed. Adjourned.

Vice Chair Ho adjourned the Contested Case Calendar at 9:11 a.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.

